

**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**GWENDOLYN P. MCQUIRTER,  
et al.,**

**Plaintiffs,**

**v.**

**CITY OF MONTGOMERY, et al.,**

**Defendants.**

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**CASE NO.: 2:07-cv-00234-MEF-WC**

**DEFENDANTS' OBJECTION TO PLAINTIFFS' CONTENTION  
PURSUANT TO 42 U.S.C § 1983 IN PRETRIAL ORDER**

**COME NOW** Defendants and submit this objection to Plaintiffs' Contention pursuant to 42 U.S.C. § 1983 submitted in section A.(2) of the Pretrial Order. In support of said Objection, Defendants state unto the Court the following:

1. A pretrial hearing was held in chambers on January 31, 2008.
2. During the hearing, counsel for Plaintiffs and Defendants discussed their respective objections or oppositions to the other parties' contentions in the Pretrial Order. Defendants, in chambers, agreed to withdraw the privilege defense submitted pursuant to *ALA. Code* 13A-11-161. An Amended Pretrial Order was submitted to the Court on February 4, 2008 with the privilege defense withdrawn by Defendants.
3. Also discussed during the hearing was Plaintiffs' inclusion of a custom or policy contention in the pretrial order. Defendants object to the Plaintiffs' Contention submitted in the Pretrial Order pursuant 42 U.S.C. § 1983 as it does not conform to the pleadings, more specifically, to Count VIII of the Second Amended Complaint, which contains no allegations of a custom or policy.
4. Count VIII of the Second Amended Complaint alleges liability against the City of Montgomery under a theory of respondeat superior only. A governing entity cannot be held liable in an action brought pursuant to 42 U.S.C. § 1983 under a theory of respondeat superior.

*Monell v. Department of Social Services of New York City*, 436 U.S. 658, 694 (1978).

**WHEREFORE**, Defendants respectfully request that the Pretrial Order be restricted to matters contained only in the pleadings and that any mention of custom or policy pursuant to 42 U.S.C. § 1983 be removed or stricken prior to entry of the final Pretrial Order.

Respectfully submitted this 5<sup>th</sup> day of February, 2008.

/s/Kimberly O. Fehl  
Kimberly O. Fehl (FEH001)

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**CERTIFICATE OF SERVICE**

I hereby certify that foregoing has been served upon the following by PACER/electronic filing or by U. S. Mail, postage prepaid on this 5<sup>th</sup> day of February, 2008:

Jerry M. Blevins, Esq.  
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/s/ Kimberly O. Fehl  
Of Counsel